## REMARKS

Claims 1 to 42 are the pending claims being examined in the application, of which Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41 are independent. Claims 7, 14, 12, 20 and 22 are being amended herein. Reconsideration and further examination are respectfully requested.

Claims 7, 14, 12, 20 and 22 are being amended independent of any stated grounds for rejection of these claims.

In one or more embodiments, streaming content is provided in accordance with preferences, and determined characteristics of preferences, of a member community, the members of the community having been determined to have at least one preference in common. An individual data stream is biased in accordance with the determined characteristics and the preferences of the members of the community, such that the individual data stream has more content that the community likes and less content that the community dislikes. Thus, by way of a non-limiting example, an individual data stream is determined based on a community whose members have been determined to share at least one preference for data stream content, the individual data stream being biased according to the member community's preferences and determined characteristics of such preferences.

Claims 3, 6, 9, 14, 17, 22, 25, 28, 31, 34, 37 and 41 are rejected under 35 U.S.C. § 112, first and second paragraphs. In making the rejection, the Office Action focuses on the use of the phrases "first community" and "second community," and contends that "a second community, inherently and by its nature, cannot in any way exist without a first community" and it is therefore concluded in the Office Action that "a first community cannot in any way ever be determined from a second community." The Office Action further contends that Applicants'

specification "does not reasonably provide enablement for evaluating preferences of a second community in order to determine a first community from a second community."

In response, the words "first" and "second" are used merely to differentiate between one community and another community, and such use is a common and accepted convention. Reference is respectfully made to *3M Innovative Properties Co. v. Avery Dennison Corp.*, 69 USPQ2d 1050 (Fed. Cir. 2003), wherein the court stated:

> "[t]he use of the terms 'first' and 'second' is a common patent-law convention to distinguish between repeated instances of an element or limitation. *See, e.g., Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc.*, 67 USPQ2d 1865 (Fed. Cir. 2003) ('first and second sidewall surfaces'); *Springs Window Fashions LP v. Novo Indus., L.P.*, 65 USPQ2d 1826 (Fed. Cir. 2003) ('first and second opposed ends'). In the context of claim 1, the use of the terms 'first ... pattern' and 'second ...pattern' is equivalent to a reference to 'pattern A' and 'pattern B,' and should not in and of itself impose a serial or temporal limitation onto claim 1." *Id* at 1055.

Referring to Claim 3, for example, the terms "first" and "second" are used to differentiate between first and second communities, the former being determined from the latter. As indicated by the court in the above-quoted case, this is a common and acceptable use of these terms. Furthermore, the Application provides more than adequate support for determining a first community from a second community. For one example, and without limitation, reference is respectfully made to page 9, lines 5 to 9, which provides a description of selecting a first community, from a subscriber database, or a second community, the members of the first community having expressed a preference (e.g., provided a rating of 70 or more on a "favorite artist" scale from least favorite, 0, to most favorite, 100, for the singer Tori Amos). The foregoing discussion should provide more than ample reason to withdraw the 35 U.S.C. § 112 rejections, and such action is respectfully requested.

Turning now to the rejection of the claims based on art, Claims 1 to 42 under 35 U.S.C. § 103(a) over U.S. Patent No. 6,192,340 (Abecassis) and U.S. Patent No. 5,926,207 (Vaughn). In addition, in making the rejection, the Office Action refers to RealNetworks and MusicMatch Jukebox web pages (collectively referred to herein as the "referenced web pages").

Claim 1 recites a method for providing a data stream according to preferences of a community. An individual data stream is biased according to determined characteristics of a member community's preferences regarding data stream content. Each member of the community having associated preferences regarding data stream content, and each member of the community having been determined to have at least one data stream content preference in common. The individual data stream biased according to the determined characteristics of the community members' preferences has more content that the community likes and less content that the community dislikes.

The applied art, namely Abecassis, Vaughn and the referenced web pages, fails to teach, suggest or disclose a member community, data stream content preferences associated with members of the member community, a member community all of the members of which have been determined to have at least one data stream content preference in common, characteristics of the member community's data stream content preferences and/or an individual data stream biased according to the member community's data stream content preferences and according to determined characteristics of the member community's data stream content preferences, so that the individual data stream has more content that the community likes and less content that the community dislikes.

Abecassis describes a mechanism which focuses on providing individual preferences and providing data stream content to an individual based on that individual's own preferences, and in

particular to providing music and real-time informational items, such as news, weather, traffic reports, to the individual based on the individual's own preferences. Reference is respectfully made to col. 3, lines 44 to 64, which describes the apparatus and method disclosed therein as:

> "... an apparatus capable of, and a method of, playing audio, the apparatus comprising communicating, processing, and playing means for, and the method comprising the steps of: communicating a user's information preferences to an information provider; receiving, from the information provider, informational items that are responsive to the user's information references; interleaving and sequencing, for the user, a playing of the received informational items with a playing of a plurality of musical items included in an audio library of the user; and playing, for the user and responsive to the interleaving and sequencing, the received informational items within a playing of the plurality of musical items; and wherein the playing comprises a voice synthesizing of an at least one of informational item; wherein the playing is responsive to a schedule preferences of the user; wherein a verified apparent listening of a playing of an informational item is associated with a credit; and/or wherein a user's reception of a communication unrelated to the informational items is integrated within a playing of musical items."

As can be seen from the above-quoted portion, Abecassis focuses on one individual's preferences, and providing that individual with content based on his own preferences. Thus, Abecassis allows a user to specify a preference for informational items and for music, and the informational items are obtained and interleaved with the music based on the user's own stated preferences. This is clearly not the same as collectively using preferences of a community of members determined to share at least one preference to determine characteristics of the preferences and biasing an individual data stream in accordance with the preferences of the members of the community and the determined characteristics of the community's preferences, as in the claimed invention.

Other portions of Abecassis cited in the Office Action further show the focus on using an individual's preferences to provide content to the individual. At col. 15, lines 20 to 24, Abecassis describes that while each member of a household can contribute to an audio library, "each member ... utilizes [the library] according to their specific music preferences".

Furthermore, at col. 15, lines 25 to 67, Abecassis describes techniques by which a user can specify his own specific preferences, i.e., the user can establish his own preferences using an audio player, such as the MusicMatch Jukebox or RealJukebox audio player, or the user can specify his own preferences regarding the length of time that the user would like a playlist to play, and/or the pace and sequence of the tunes played. At col. 16, lines 47 to 67 and col. 17, lines 1 to 67, Abecassis describes the acquisition of music and informational items for a user based on that user's preferences. Abecassis clearly discloses that the preferences established by the user are used exclusively for that user.

While the Office Action identifies one section of Abecassis, i.e., col. 17, lines 45 to 48, which mentions a plurality of users, this portion of Abecassis concerns the acquisition of informational items from an information provider. Abecassis does not determine commonality of preferences of the plurality of users. Rather, this portion of Abecassis is simply examining each of the individual user's preferences to determine requirements that each user needs in order to allocate information gathering resources to gather the information required by each individual user. Nothing in the cited portion discloses or even suggests a community whose members are determined to have at least one of their preferences in common. Further, nothing in the cited portion discloses or even suggests biasing an individual data stream in accordance with characteristics determined from the preferences of community members, such that the individual data stream is biased according to the determined characteristics of the preferences, and biased according to the community members' preferences.

At col. 18, lines 1 to 67, Abecassis describes the ability for a user to specify technical preferences, which are preferences Abecassis describes as:

> "... the relative volume and speed of the different categories of information, and the voice to be utilized in the synthesizing of information. For example, a voice imitating the president's voice may be utilized to deliver the weather information, while the voice of the user's mother may be utilized to deliver traffic reports. A user may prefer that advertisements be delivered at a 20% lower volume than the volume selected for musical content, and at a 10% faster rate that a real-time rate."

Abecassis states that these technical preferences can be established "individually, in combinations, and/or as specified by logical Boolean operators". Thus, for example, a user can combine one or more of his preferences, e.g., to specify that he prefers to have the weather played using his mother's voice and at a 20% lower volume than the volume used to play musical content. The weather will be played for that user using his mother's voice and at a 20% lower volume than musical content is played for that user. This clearly is not the same as a community whose members are determined to have at least one of their preferences in common, and/or biasing an individual data stream in accordance with characteristics determined from the preferences of community members, such that the individual data stream is biased according to the determined characteristics of the preferences, and biased according to the community members' preferences.

The Office Action states, at page 11:

> "[r]egarding Applicant's argument that categories of music do not read on communities of music, Examiner respectfully disagrees. Specifically, Examiner makes reference to Applicant's own specification, (pp. 7-13), wherein Applicant states, 'it is yet another object of the present invention to provide community biased music data stream according to a community expressing preferences for music carried by said data stream, such as artist or genre'. Thus, Examiner maintains that a category of music, (i.e.: Mozart or classical music), clearly and obviously reads upon a community comprised of listeners who prefer the respective classical music artist or genre."

The music categories described in Abecassis cannot be equated to a member community which expresses preferences for music. A category of music, such as Mozart or classical music as pointed out in the Office Action, clearly cannot be said to be the same as a community whose members express preferences for such a category of music, for example, let along a community whose members are determined to have at least one preference in common.

The portion of Applicants' specification identified in the above-quoted excerpt of the Office Action clearly cannot be said to state or even imply that a community expressing preferences is the same as a category of music, an artist, a genre, for example, for which members of a community might express a preference. This is not only clear from reading the portion of Applicants' specification identified (and quoted) in the Office Action, but is also clear from a reading of the specification as a whole. A community expressing preferences for an item, such as a category of music, clearly cannot be said to be the same as the item for which the community expresses a preference.

Vaughn fails to remedy the deficiencies noted above with respect to Abecassis. At page 8, the Office Action concedes that Abecassis fails to disclose a community, e.g., a first or second community", and contends that Vaughn's ability to categorize and subcategorize broadcast channels contained in a master list of broadcast channels remedies the admitted deficiency of Abecassis. The Office Action states that:

> "Vaughn teaches a database containing a master list of broadcast channels selectively programmable to define broadcast channel behavior independently of other broadcast channels, (Col. 2, lines 5-44 and Claims 1 to 28), wherein the user can further designate sub-lists comprising a filtering functionality."

Vaughn describes a system which allows a user to define behavior for a broadcast channel independent of other broadcast channels. Vaughn describes a database which maintains a master list of broadcast channels, with each channel having associated programmable data, which allow a user to define the behavior of a broadcast channel independent of the other broadcast channels. At col. 2, lines 24 to 27, Vaughn describes that the programmable data can allow the user to have a particular logo associated with a broadcast, such that the logo would be displayed when the user's television was tuned to the specific broadcast channel.

Vaughn's master broadcast channel list (or subdivisions thereof), and/or a user's ability to program behavior associated with one channel separate from behavior associated with another channel cannot be said to be the same as a community of members determined to share at least one preference for data stream content. Furthermore, nothing in Vaughn discloses or even suggests providing data streams according to a member community's preferences, the members of the community having been determined to have at least one of their preferences in common, determining characteristics of the community members' preferences, and/or biasing an individual data stream in accordance with the determined characteristics, such that the individual data stream is biased according to the community members' preferences.

For at least the foregoing reasons, it is respectfully submitted that the stated grounds for rejection of Claims 1 to 42 fail to establish a prima facie case of obviousness under 35 U.S.C. § 103(a), since the applied art does not disclose each and every one of the elements claimed. It is therefore respectfully submitted that the § 103(a) rejection should be withdrawn.

Even while the above reasons should be sufficient reason to withdraw the § 103(a) rejection, it is submitted that the grounds for rejection are deficient and should be withdrawn, since the grounds fail to make a satisfactory showing of a suggestion, teaching, or motivation to combine the art as suggested in the Office Action. The Office Action states, at pages 8 and 9, that:

> [i]t would have been obvious to one of ordinary skill in the art at the time of [the] invention by Applicant to combine the category/sub-category of Vaughn with the Abecassis user-preference transmission method as Abecassis clearly teaches the analysis of the interests of a plurality of users to more closely match said users interests, (Abecassis - Col. 17, lines 46-49), and Vaughn clearly teaches the need to limit desired functionalities such that they are individually customized and associated with a particular broadcast channel per user(s) preference, (Vaughn - Col. 1, lines 61-67 & Col. 2, lines 1-2). In other words, the combination further defines user interest and preference as it pertains to broadcast data."

It is respectfully submitted that the stated reasoning is not only factually incorrect (as discussed in depth hereinabove), but is also devoid of the necessary reasoned showing of a suggestion, teaching or motivation to make the hypothetical combination suggested in the Office Action. A showing of a suggestion, teaching or motivation is essential as a defense against the use of hindsight, and against the use of Applicants' own disclosure as a blueprint to modify the teachings of the applied art to reject the claims of the present application. It is therefore respectfully submitted that the 35 U.S.C. § 103(a) grounds for rejection should by withdrawn for the reason that they are deficient for a lack of a proper showing to make the hypothetical combination suggested in the Office Action.

For at least the reasons discussed above, the applied art, individually or in any permissible combination (if one even exists, a fact in no way conceded by Applicants), fails to disclose or suggest the claimed invention. Independent Claim 1, as well as each of the claims that depend therefrom, is therefore believed to be in condition for allowance.

For at least the same reasons stated in connection with Claim 1, independent Claims 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41, as well as the claims that depend from these claims, are believed to be in condition for allowance. Additional elements recited in these claims are also not believed to be taught, suggested or disclosed by the applied art, either alone or in any hypothetical combination (if such combination is even permissible, a point that is in no way conceded).

Claims 7, 14, 15 and 22 recite, among other elements, that the first community is self-defining by means of preferences associated with each member of the first community regarding data stream content, such that said first community comprises members determined to have at least one preference in common. As discussed above, the applied art fails to teach, suggest or disclose a community whose members have associated data stream content preferences, and whose members are determined to have at least one of the preferences in common. It follows then that the applied art cannot be said to teach, suggest or disclose the claimed self-defining first community.

Claims 3, 6, 9, 14, 17, 25, 31 and 37, for example, recite, among other elements, determining a first community from a second community, which second community has at least as many members as the first community and each member of the second community has data stream content preferences. The second community's preferences are evaluated, and the first community is determined from the second community, such that members of the first community are members of the second community determined to have at least one preference in common. The applied art is also not seen to teach, suggest or disclose a second member community, from which the first community is determined, the members of the first community being members of the second community having at least one preference in common.

Among the elements recited therein, Claims 2, 6, 8, 16, 28 and 30 bias an individual data stream according to determined characteristics of the first community's preferences, so that the individual data stream is biased for positive preferences of the first community members and biased against negative preferences of the first community members. As discussed herein, the applied art fails to teach, suggest or disclose a member community. It follows then that the applied art also fails to teach, suggest or disclose biasing an individual data stream for positive preferences, and against negative preferences, of the members of the first community.

As discussed herein, the applied art fails to teach, suggest or disclose biasing an individual data stream according to a first community's preferences and determined characteristics of the first community's preferences. It follows then that the applied art also fails to teach, suggest or disclose biasing the individual data stream according to a first community's preferences and determined characteristics of the first community's preferences and so that the individual data stream complies with the Digital Millennium Copyright Act, as recited in Claims 4, 10, 18, 26, 32 and 38.

Claims 12 and 20 recite that each member in a first community is determined to provide an artist rating which exceeds a predetermined rating threshold. Claims 13 and 21 recite that the rating corresponds to a scale of 1 to 100 and that the predetermined rating threshold is 70. The Examiner does not identify a specific portion of the applied art which the Examiner considers to disclose the elements of these claims, and no portion of the applied art is believed to teach, suggest or disclose the claimed elements.

Claims 7, 14 and 22 have, among their recited elements, re-establishing a first community, re-establishing preferences of the first community and determined characteristics of the preferences, and re-biasing the individual data stream by repeating the step of providing a

first community, each member of which having associated data stream content preferences, and the members of the first community determined to have at least on preference in common, the step of determining characteristics of the first community members' preferences to provide determined characteristics, and the step of biasing the individual data stream. For at least the reasons discussed herein, the applied art cannot be said to teach, suggest or disclose the claimed providing, determining and biasing steps. The applied art cannot therefore be said to teach, suggest or disclose re-establishing a first community, re-establishing the determined characteristics and re-biasing the individual data stream by repeating by repeating the providing, determining and biasing steps.

Among the elements recited therein, Claims 13, 28, 29 and 34 permit the first community and determined characteristics of preferences of the first community to change over time according to received preferences of the first community. Preferences from receivers of data stream content of a music-related database including songs and/or music videos are repeatedly received, the first community of receivers is repeatedly determined from the received preferences, and characteristics of the received preferences of the first community are repeatedly determined to provide determined characteristics. For at least the reasons discussed herein, the applied art cannot be said to teach, suggest or disclose at least these elements of the claims.

Among the elements recited therein, Claims 15 and 22 transmit an individual data stream to a first user, the individual data stream is biased according to determined characteristics and a first community members' preferences and includes content highly rated by the first user in accordance with preferences received from the first user. The applied art is not seen to teach, suggest or disclose at least these features of Claims 15 and 22.

In view of the foregoing, the entire application is believed to be in condition for allowance. Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

In this regard, Applicant's undersigned attorney may be reached by phone in California (Pacific Time) at (714) 708-6500. All correspondence should continue to be directed to the below-listed address.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that the Attorney Docket Number is referred when charging any payments or credits for this case.

Respectfully submitted,

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Carole A. Quinn
Reg. No. 39,000
Email: quinnc@gtlaw.com
Phone: (714) 708-6500

Customer Number 32361
GREENBERG TRAURIG, LLP
Met Life Building
200 Park Avenue, 20th Floor
New York, New York 10166
Phone: (212) 801-9200
Fax: (212) 801-6400

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